

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DANIEL THOMAS O'DELL	:	CIVIL ACTION
	:	NO. 07-1094
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
	:	
SILVERSTEIN PROPERTIES	:	
et al.,	:	
	:	
Defendants.	:	

**O R D E R**

**AND NOW**, this **19th day of July, 2007**, it is hereby  
**ORDERED** that this action shall be **DISMISSED** as frivolous and the  
case marked as **CLOSED**.

It is **FURTHER ORDERED** that the motion to proceed in forma  
pauperis is **DENIED** as moot.<sup>1</sup>

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1. An action filed by a litigant proceeding in forma pauperis is subject to dismissal at any time if it lacks an arguable basis in law or fact. See 28 U.S.C. § 1915(e)(2)(B)(i); Neitzke v. Williams, 490 U.S. 319, 325 (1989). Here, Plaintiff's action is frivolous for two reasons.

Plaintiff states that this action is as an "[a]ppeal[]" from 2:03 cv-05273-er Eastern District of Pennsylvania," styled as Mariani v. the United States of America, et al. (doc. no. 3). Mariani, like the instant action, alleged a conspiracy by the United States government and various other individuals to cause the events that took place on September 11, 2001. Compare Plaintiff's Notification of Appeal (No. 07-CV-1094, doc. no. 3) with Complaint (No. 03-CV-5273, doc. no. 1). The Court ultimately dismissed Mariani on April 16, 2004 (doc. no. 17). The Third Circuit subsequently dismissed an appeal of Mariani on July 1, 2004 (doc. nos. 28, 29). In the meanwhile, because of numerous frivolous motions filed in the previous action, the Court enjoined the filing of any further motions unless leave was granted by the Court (doc. no. 23).

AND IT IS SO ORDERED.

s/Eduardo C. Robreno  
**EDUARDO C. ROBRENO, J.**

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As the Third Circuit has recognized, albeit in an unpublished case, res judicata is a proper basis for dismissal under 28 U.S.C. § 1915(e)(2)(B). See Gimenez v. Morgan Stanley DW, Inc., 202 Fed. Appx. 583 (3d Cir. 2006) (citing Gleash v. Yuswak, 308 F.3d 758, 760-61 (7th Cir.2002)). Here, Plaintiff is attempting to relitigate a claim that was already dismissed, and thus his claim is frivolous. See CoreStates Bank, N.A. v. Huls America, Inc., 176 F.3d 187, 194 (3d Cir. 1999).

Plaintiff's claim is also frivolous because it purports to be an appeal of Mariani, a case which the Court and later the Third Circuit Court have already dismissed. It is elementary that an appeal of a previously dismissed case cannot be lodged in the federal district court in which the case was originally dismissed. Thus, for this reason too, Plaintiff's claim must be dismissed as frivolous.